

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION**

DAVID SCOGGINS,

PLAINTIFF,

VS.

CIVIL ACTION NO. 2:08CV032-P-A

BOSTON SCIENTIFIC CORPORATION,

DEFENDANT.

ORDER

These matters come before the court upon Defendant Boston Scientific Corporation's Motion to Stay [24] pending appeal to the Fifth Circuit Court of Appeals and Motion for Interlocutory Appeal [28]. After due consideration of the motion, the court finds as follows, to-wit:

On June 10, 2008 the defendant filed a motion for interlocutory appeal, arguing that the court should certify an interlocutory appeal. However, the defendant cited none of the factors discussed in 28 U.S.C. § 1292(b) used to determine whether an interlocutory appeal is appropriate. Pursuant to § 1292(b), a court may grant a motion to certify an interlocutory appeal if it "shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate question of the litigation." Although the court agrees that the question of whether the plaintiff's Second Amended Complaint relates back to the original Complaint is a controlling question of law determining dismissal *vel non*, the court does not agree that the defendant has demonstrated that there is substantial ground for difference of opinion warranting certification. As stated above, the defendant's motion for interlocutory appeal is void of arguments addressing §1292(b) factors. Accordingly, the court finds that the motion to certify an interlocutory appeal should be denied. Thus, the defendant's motion to stay pending the appeal should be dismissed as

well.

IT IS THEREFORE ORDERED AND ADJUDGED that Defendant Boston Scientific Corporation's Motion to Stay [24] pending appeal to the Fifth Circuit Court of Appeals and Motion for Interlocutory Appeal [28] are **DENIED**.

SO ORDERED this the 14th day of July, A.D., 2008.

/s/ W. Allen Pepper, Jr.
W. ALLEN PEPPER, JR.
UNITED STATES DISTRICT JUDGE